

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Juan Arroyo et al.	Confirmation No.:	5599
Serial No.:	10/715,868	Art Unit:	1648
Filing Date:	November 17, 2003	Examiner:	Mary E. Mosher
Patent No.:	7,507,415 B2	Customer No.:	21559
Issued:	March 24, 2009		
Title:	WEST NILE VIRUS VACCINE		

PETITION UNDER 37 C.F.R. § 1.182 FOR RECONSIDERATION OF APPLICATION  
FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705

In response to the Decision Dismissing Request for Reconsideration of Patent Term Adjustment under 37 C.R.F. § 1.705(d), mailed on August 27, 2009, applicants respectfully petition under 37 C.F.R. § 1.182 for reconsideration of the Application for Patent Term Adjustment filed on May 26, 2009.

In particular, applicants submit that the Office incorrectly calculated the delay under 35 U.S.C. § 1.54(b)(1)(A), the “A Delay.” The Decision issued by the Office fails to address applicants’ arguments that the Office incorrectly calculated the A Delay for failing to issue the patent within four months of payment of the issue fee. These arguments are summarized below.

Further, applicants submit that, in calculating whether any A Delay overlaps with the delay under 35 U.S.C. § 1.54(b)(1)(B), the “B Delay,” the Office should either follow the holding of *Wyeth v. Dudas*, 580 F.Supp.2d 138 (D.D.C. 2008), or stay a final decision

on this matter until the appeal of the *Wyeth* decision has been decided by the appellate court.

#### Calculation of A Delay After Payment of the Issue Fee

As an initial matter, based on an analysis of 37 C.F.R. § 1.704, applicants do not disagree with the Office's calculation of applicant delay as being 166 days. Also, U.S. Patent 7,507,415, "the '415 patent" issued on an application filed on November 17, 2003, and an Office Action was mailed by the Office on September 2, 2005, which is 228 days past the 14-month date of January 15, 2004, consistent with the Office's determination (see Exhibit A).

Applicants disagree with the Office's determination of 75 further days of Office A Delay associated with the issuance of the patent more than four months after the payment of the issue fee, because the date of filing of applicants' issue fee payment, July 24, 2008, listed in Exhibit A, does not appear to have been taken into consideration in determining the Office delay. Applicants note that Exhibit A, in addition to the issue fee payment filed July 24, 2008, lists an issue fee payment filed September 8, 2008. Applicants submit that the September 8<sup>th</sup> filings are incorrectly characterized in the Patent Term Adjustment History on the PAIR system. Enclosed as Exhibit B is a copy of the Image File Wrapper Bibliographic Data from the PAIR system. The filings dated September 8, 2008 are enclosed as Exhibit C<sup>1</sup>. As shown in Exhibit C, the September 8<sup>th</sup> filings are a Petition to

---

<sup>1</sup> Also, while Patent Term Adjustment History (Exhibit A) lists an RCE has having been filed on September 5, 2008, no such RCE was filed, as is evident from the Image File Wrapper Bibliographic Data (Exhibit B).

Withdraw Holding of Abandonment; the Office granted this petition on January 22, 2009 (Exhibit D). As such, applicants submit that the issue fee was timely paid on July 24, 2008. Applicants should not be penalized for an Office delay caused by an erroneous abandonment of the application.

The time interval between the filing of applicants' issue fee payment on July 24, 2008 and the March 24, 2009 issue date of the '415 patent exceeds four months by 120 days, resulting in 120 days of A Delay, instead of 75 days as listed in Exhibit A.

Applicants conclude that the Office's A Delay associated with issuing the patent later than four months after the payment of the issue fee is 120 days and not 75 days as calculated by the Office.

#### Overlap of A Delay and B Delay

As explained in applicants' May 26, 2009 Application for Patent Term Adjustment, in accordance with the *Wyeth* decision, where A Delay occurs entirely before the three-year date, and thus does not overlap the period of B Delay, the periods of A Delay and B Delay are not to be considered overlapping under § 154(b)(2)(A), but rather must be added together to determine the overall Office delay.

The Office appears to have calculated the period of B Delay to be 495 days (based on a total of 570 days of Office delay shown in Exhibit A, of which 75 were incurred after the filing of a Request for Continued Examination). Under 37 C.F.R. §§ 1.702(b) and 1.703(b), the time interval between the date that is three years from filing of the application and the filing of a Request for Continued Examination counts as B Delay. In

this case, the three-year date was November 17, 2006, and the Request for Continued Examination (RCE) was filed on March 26, 2008, or 495 days later. Applicants agree with the Office's calculation of B Delay.

As is discussed above, when the periods of A Delay and B Delay do not overlap, applicants are entitled to both periods of delay. Here, 228 days of A Delay were incurred by the Office before the November 17, 2006 beginning of the period of B Delay and, therefore, under the holding of *Wyeth*, these 228 days are non-overlapping with the B Delay. Applicants are entitled, under U.S.C. § 154(b)(2)(A) and 37 C.F.R. § 1.703(f), to the sum of these periods in the patent term adjustment calculation.

Also, the above-noted 120 days of A Delay incurred by the Office after the July 24, 2008 payment of the issue fee are non-overlapping with period of B Delay (between November 17, 2006 and March 26, 2008).

Applicants do not dispute that the 68 days of Office A Delay incurred for not issuing an action in response to applicants' June 19, 2007 reply within four months overlap with the period of B Delay and, therefore, applicants are only entitled to one period of delay, namely the 495 days of B Delay which include this 68-day time period.

Applicants conclude that, under *Wyeth*, the Office delay associated with the '415 patent is 228 days (A Delay) + 495 days (B Delay) + 120 days (A Delay) = 843 days, while the applicant delay is 166 days (as calculated by the Office). Thus, the '415 patent is entitled to a total of  $843 - 166 = 677$  days of Patent Term Adjustment under 37 C.F.R. § 1.703.

## SUMMARY

Applicants submit that the Office should either follow *Wyeth*, which is binding precedent on the Office unless overturned on appeal, or stay a decision on this matter until the appellate court has issued a decision. Under the holding of *Wyeth*, applicants submit that the present patent is entitled to an additional 228 days of Patent Term Adjustment for a total of 677 days of Patent Term Adjustment.

Further, applicants submit that regardless of whether *Wyeth* is upheld by the appellate court, the Office's calculation of the Patent Term Adjustment is incorrect. The Office, as explained above, incurred 120 days of A Delay, and not 75 days of A Delay, after the payment of the issue fee. As such, even if the Office fails to follow the *Wyeth* decision or the *Wyeth* decision is not upheld, the Patent Term Adjustment should be 495 days (B Delay) + 120 days (A Delay) = 615 days, while the applicant delay is 166 days (as calculated by the Office). In this scenario, the '415 patent is entitled to a total of 615 - 166 = 449 days of Patent Term Adjustment under 37 C.F.R. § 1.703.

Applicants request that the Patent Term Adjustment determination be corrected accordingly.

Transmitted herewith is \$400.00 in payment of the fee set forth in 37 C.F.R.

§ 1.17(f). If there are any additional charges or any credits, please apply them to Deposit  
Account No. 03-2095.

Respectfully submitted,

Date: October 13, 2009

Susan M. Michaud  
Susan M. Michaud, Ph.D.  
Reg. No. 42,885

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045

**EXHIBIT A****10/715,868 WEST NILE VIRUS VACCINE****05-20-  
2009::10:13:08****Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/715,868

Filing or 371(c) Date:	11-17-2003	USPTO Delay (PTO) Delay (days):	570
Issue Date of Patent:	03-24-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	166
Post-Issue Petitions (days):	+0	Total PTA (days):	404
USPTO Adjustment(days):	+0	Explanation Of Calculations	

**Patent Term Adjustment History**

Date	Contents Description	PTO(Days)	APPL(Days)
03-04-2009	PTA 36 Months	199	
03-24-2009	Patent Issue Date Used in PTA Calculation	75	
02-04-2009	TC Return to Pubs	⬆	
02-06-2009	Dispatch to FDC	⬆	
09-08-2008	Issue Fee Payment Verified	⬆	
09-08-2008	Issue Fee Payment Received		
09-08-2008	Statement Filed Indicating a Loss of Entitlement to Small Entity Status		
09-05-2008	Workflow - Request for RCE - Finish		
01-27-2009	Email Notification		
07-24-2008	Issue Fee Payment Verified		
01-22-2009	Withdraw Publication/Pre-Exam Abandon		
01-23-2009	Mail-Petition to Revive Application - Granted		
01-22-2009	Petition to Revive Application - Granted		
09-08-2008	Petition Entered		
09-05-2008	Workflow - Request for RCE - Begin		
08-22-2008	Email Notification		
08-22-2008	Mail Abandonment for Failure to Pay Issue Fee		
07-25-2008	Abandonment for Failure to Pay Issue Fee		
05-01-2008	Sequence Forwarded to Pubs on Tape		
04-26-2008	Electronic Review		
04-24-2008	Mail Notice of Allowance		
04-22-2008	Document Verification		
04-21-2008	Notice of Allowance Data Verification Completed		
03-26-2008	Information Disclosure Statement considered		
03-26-2008	Information Disclosure Statement considered		
04-10-2008	Examiner Interview Summary Record (PTOL - 413)		
04-11-2008	Miscellaneous Incoming Letter		
03-26-2008	Information Disclosure Statement (IDS) Filed		
04-10-2008	Date Forwarded to Examiner		
03-26-2008	Request for Continued Examination (RCE)		

04-10-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
03-26-2008	Information Disclosure Statement (IDS) Filed		
03-26-2008	Information Disclosure Statement (IDS) Filed		
03-26-2008	Workflow - Request for RCE - Begin		
02-19-2008	Miscellaneous Incoming Letter		
01-07-2008	Sequence Forwarded to Pubs on Tape		
12-27-2007	Electronic Review		
12-26-2007	Email Notification		
12-26-2007	Mail Notice of Allowance	68	
12-19-2007	Document Verification	↑	
12-19-2007	Notice of Allowance Data Verification Completed	↑	
10-15-2007	Information Disclosure Statement considered	↑	
12-06-2007	Email Notification	↑	
11-28-2007	PG-Pub Issue Notification	↑	
10-15-2007	Reference capture on IDS	↑	
10-15-2007	Information Disclosure Statement (IDS) Filed		118
10-15-2007	Information Disclosure Statement (IDS) Filed		↑
10-18-2007	Case Docketed to Examiner in GAU		↑
10-18-2007	Document Verification		↑
08-23-2007	Case Docketed to Examiner in GAU		↑
08-18-2007	Date Forwarded to Examiner		↑
08-17-2007	Supplemental Response		↑
08-18-2007	Date Forwarded to Examiner		↑
06-19-2007	Response after Non-Final Action		↑
08-17-2007	Mail-Petition Decision - Granted		
06-19-2007	Petition Entered		
06-20-2007	Error(s) in CRF Corrected by STIC		
03-19-2007	Mail Non-Final Rejection		
03-05-2007	Non-Final Rejection		
03-02-2007	Date Forwarded to Examiner		
03-02-2007	Withdrawal of Notice of Allowance		
02-22-2007	Dispatch to FDC		
01-22-2007	Response to Reasons for Allowance		
01-27-2007	Application Is Considered Ready for Issue		
01-22-2007	Issue Fee Payment Verified		
01-22-2007	Issue Fee Payment Received		
10-31-2006	Mail Examiner's Amendment		
10-30-2006	Sequence Forwarded to Pubs on Tape		
10-30-2006	Examiner's Amendment Communication		
10-25-2006	Examiner Interview Summary Record (PTOL - 413)		
10-18-2006	Mail Notice of Allowance		



10-16-2006	Notice of Allowance Data Verification Completed	
10-16-2006	Case Docketed to Examiner in GAU	
06-19-2006	Information Disclosure Statement considered	
08-04-2006	Information Disclosure Statement considered	
08-04-2006	Information Disclosure Statement (IDS) Filed	
08-04-2006	Information Disclosure Statement (IDS) Filed	
08-10-2006	Date Forwarded to Examiner	
08-04-2006	Response after Non-Final Action	14
08-04-2006	Request for Extension of Time - Granted	⬆
06-19-2006	Information Disclosure Statement (IDS) Filed	⬆
06-19-2006	Information Disclosure Statement (IDS) Filed	⬆
04-21-2006	Mail Non-Final Rejection	⬆
04-17-2006	Non-Final Rejection	
09-13-2004	Information Disclosure Statement considered	
01-18-2006	Date Forwarded to Examiner	
01-05-2006	Response after Non-Final Action	34
01-05-2006	Request for Extension of Time - Granted	⬆
09-02-2005	Mail Non-Final Rejection	228
08-08-2005	Non-Final Rejection	⬆
07-06-2005	Case Docketed to Examiner in GAU	⬆
09-13-2004	Miscellaneous Incoming Letter	⬆
11-17-2003	Oath or Declaration Filed (Including Supplemental)	⬆
11-17-2003	New or Additional Drawing Filed	⬆
12-15-2004	IFW TSS Processing by Tech Center Complete	⬆
09-13-2004	Reference capture on IDS	⬆
09-13-2004	Information Disclosure Statement (IDS) Filed	⬆
09-13-2004	Information Disclosure Statement (IDS) Filed	⬆
12-08-2004	Case Docketed to Examiner in GAU	⬆
11-30-2004	Application Return from OIPE	⬆
11-30-2004	Application Return TO OIPE	⬆
11-30-2004	Application Dispatched from OIPE	⬆
11-30-2004	Application Is Now Complete	⬆
11-10-2004	Additional Application Filing Fees	⬆
11-10-2004	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	⬆
11-10-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	⬆
11-22-2004	CRF Is Good Technically / Entered into Database	⬆
08-10-2004	Notice Mailed--Application Incomplete--Filing Date Assigned	⬆
02-24-2004	Cleared by L&R (LARS)	⬆
02-03-2004	Referred to Level 2 (LARS) by OIPE CSR	⬆

12-22-2003	IFW Scan & PACR Auto Security Review	⬆
11-17-2003	Initial Exam Team nn	⬆

---

**Close Window**

## EXHIBIT B

10/715,868 WEST NILE VIRUS VACCINE

05-20-  
2009::10:29:32

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.**

**Bibliographic Data**

Mail Room Date	Document Code	Document Description	Document Category	Page Count
03-05-2009	OA.EMAIL	Email Notification	PROSECUTION	1
03-04-2009	ISSUE.NTF	Issue Notification	PROSECUTION	1
02-04-2009	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
01-27-2009	OA.EMAIL	Email Notification	PROSECUTION	1
01-22-2009	PETDEC	Petition Decision	PROSECUTION	1
09-08-2008	PET.STATUS	Petition for review/processing depending on status	PROSECUTION	7
09-08-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	7
09-08-2008	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
08-22-2008	ABN	Abandonment	PROSECUTION	1
08-22-2008	OA.EMAIL	Email Notification	PROSECUTION	1
04-24-2008	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	4
04-24-2008	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	1
04-24-2008	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
04-24-2008	BIB	Bibliographic Data Sheet	PROSECUTION	1
04-24-2008	SRNT	Examiner's search strategy and results	PROSECUTION	3
04-24-2008	1449	List of References cited by applicant and considered by examiner	PROSECUTION	1
04-24-2008	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
04-24-2008	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
04-24-2008	FWCLM	Index of Claims	PROSECUTION	2
04-24-2008	OA.EMAIL	Email Notification	PROSECUTION	1
04-11-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
04-11-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
03-26-2008	RCEX	Request for Continued Examination (RCE)	PROSECUTION	2
03-26-2008	IDS.LET	Information Disclosure Statement Letter	PROSECUTION	1
03-26-2008	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	1
03-26-2008	NPL	NPL Documents	PRIOR ART	7
03-26-2008	NPL	NPL Documents	PRIOR ART	4
03-26-2008	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2
03-26-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	3
02-19-2008	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
02-19-2008	N417	EFS Acknowledgment Receipt	PROSECUTION	2
12-26-2007	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
12-26-2007	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
12-26-2007	1449	List of References cited by applicant and considered by examiner	PRIOR ART	7
12-26-2007	CLM	Claims	PROSECUTION	6

12-26-2007	BIB	Bibliographic Data Sheet	PROSECUTION	1
12-26-2007	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
12-26-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
12-26-2007	OA.EMAIL	Email Notification	PROSECUTION	1
12-06-2007	OA.EMAIL	Email Notification	PROSECUTION	1
11-30-2007	NTC.PUB	Notice of Publication	PROSECUTION	1
10-17-2007	SRNT	Examiner's search strategy and results	PROSECUTION	2
10-15-2007	NPL	NPL Documents	PRIOR ART	1
10-15-2007	NPL	NPL Documents	PRIOR ART	10
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	13
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	5
10-15-2007	NPL	NPL Documents	PRIOR ART	11
10-15-2007	NPL	NPL Documents	PRIOR ART	25
10-15-2007	NPL	NPL Documents	PRIOR ART	10
10-15-2007	NPL	NPL Documents	PRIOR ART	25
10-15-2007	NPL	NPL Documents	PRIOR ART	14
10-15-2007	NPL	NPL Documents	PRIOR ART	17
10-15-2007	NPL	NPL Documents	PRIOR ART	13
10-15-2007	NPL	NPL Documents	PRIOR ART	4
10-15-2007	NPL	NPL Documents	PRIOR ART	8
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	1
10-15-2007	NPL	NPL Documents	PRIOR ART	1
10-15-2007	NPL	NPL Documents	PRIOR ART	14
10-15-2007	NPL	NPL Documents	PRIOR ART	15
10-15-2007	NPL	NPL Documents	PRIOR ART	11
10-15-2007	NPL	NPL Documents	PRIOR ART	8
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	3
10-15-2007	NPL	NPL Documents	PRIOR ART	11
10-15-2007	NPL	NPL Documents	PRIOR ART	4
10-15-2007	NPL	NPL Documents	PRIOR ART	10
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	1
10-15-2007	NPL	NPL Documents	PRIOR ART	41
10-15-2007	NPL	NPL Documents	PRIOR ART	11
10-15-2007	NPL	NPL Documents	PRIOR ART	10
10-15-2007	NPL	NPL Documents	PRIOR ART	8
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	6
10-15-2007	NPL	NPL Documents	PRIOR ART	14
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	10
10-15-2007	NPL	NPL Documents	PRIOR ART	12
10-15-2007	NPL	NPL Documents	PRIOR ART	6

10-15-2007	NPL	NPL Documents	PRIOR ART	5
10-15-2007	NPL	NPL Documents	PRIOR ART	8
10-15-2007	NPL	NPL Documents	PRIOR ART	3
10-15-2007	NPL	NPL Documents	PRIOR ART	6
10-15-2007	NPL	NPL Documents	PRIOR ART	4
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	1
10-15-2007	NPL	NPL Documents	PRIOR ART	8
10-15-2007	NPL	NPL Documents	PRIOR ART	14
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	7
10-15-2007	NPL	NPL Documents	PRIOR ART	7
10-15-2007	NPL	NPL Documents	PRIOR ART	9
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	4
10-15-2007	NPL	NPL Documents	PRIOR ART	4
10-15-2007	NPL	NPL Documents	PRIOR ART	3
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	3
10-15-2007	NPL	NPL Documents	PRIOR ART	2
10-15-2007	NPL	NPL Documents	PRIOR ART	3
10-15-2007	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	6
10-15-2007	FOR	Foreign Reference	PRIOR ART	110
10-15-2007	FOR	Foreign Reference	PRIOR ART	34
10-15-2007	FOR	Foreign Reference	PRIOR ART	96
10-15-2007	FOR	Foreign Reference	PRIOR ART	44
10-15-2007	FOR	Foreign Reference	PRIOR ART	23
10-15-2007	FOR	Foreign Reference	PRIOR ART	43
10-15-2007	FOR	Foreign Reference	PRIOR ART	47
10-15-2007	FOR	Foreign Reference	PRIOR ART	56
10-15-2007	FOR	Foreign Reference	PRIOR ART	122
10-15-2007	FOR	Foreign Reference	PRIOR ART	190
10-15-2007	FOR	Foreign Reference	PRIOR ART	63
10-15-2007	IDS.LET	Information Disclosure Statement Letter	PROSECUTION	2
08-21-2007	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2
08-21-2007	CTMS	Miscellaneous Action with SSP	PROSECUTION	1
08-17-2007	APP.FILE.REC	Filing Receipt	PROSECUTION	3
08-17-2007	PET.DEC.TC	Petition decision routed to the Technology Center Legal Instrument Examiners to act on the decision or continue prosecution.	PROSECUTION	6
08-13-2007	SA..	Supplemental Response or Supplemental Amendment	PROSECUTION	1
08-13-2007	SPEC	Specification	PROSECUTION	1
08-13-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
08-13-2007	ADS	Application Data Sheet	PROSECUTION	5
08-13-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	2
06-20-2007	CRFE	CRF entered - partial listing printed by STIC	PROSECUTION	10
06-19-2007	PET.OP	Petition for review by the Office of Petitions.	PROSECUTION	2
06-19-2007	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1

06-19-2007	SPEC	Specification	PROSECUTION	2
06-19-2007	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
06-19-2007	CRFS	CRF Statement Paper and CRF are the same	PROSECUTION	2
06-19-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	50
06-19-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	5
06-19-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	6
06-19-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	8
06-19-2007	AF/D	Rule 130, 131 or 132 Affidavits	PROSECUTION	76
06-19-2007	SEQLIST	Sequence Listing	PROSECUTION	35
06-19-2007	LET.	Miscellaneous Incoming Letter	PROSECUTION	1
06-19-2007	ADS	Application Data Sheet	PROSECUTION	5
06-19-2007	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	2
06-19-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	4
06-19-2007	SEQ.TXT	Sequence Listing (Text File)	PROSECUTION	1
03-19-2007	CTNF	Non-Final Rejection	PROSECUTION	6
03-01-2007	N416	Notice of Withdrawal from Issue Branch (PTOL-67)	PROSECUTION	1
01-22-2007	IFEE	Issue Fee Payment (PTO-85B)	PROSECUTION	1
01-22-2007	LET.	Miscellaneous Incoming Letter	PROSECUTION	4
10-31-2006	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	4
10-31-2006	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
10-31-2006	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
10-18-2006	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	3
10-18-2006	NOA	Notice of Allowance and Fees Due (PTOL-85)	PROSECUTION	4
10-18-2006	EXIN	Examiner Interview Summary Record (PTOL - 413)	PROSECUTION	2
10-18-2006	1449	List of References cited by applicant and considered by examiner	PRIOR ART	5
10-18-2006	IIFW	Issue Information including classification, examiner, name, claim, renumbering, etc.	PROSECUTION	1
10-18-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
10-15-2006	SRNT	Examiner's search strategy and results	PROSECUTION	3
08-11-2006	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
08-04-2006	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
08-04-2006	CLM	Claims	PROSECUTION	6
08-04-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
08-04-2006	XT/	Extension of Time	PROSECUTION	2
08-04-2006	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	3
08-04-2006	NPL	NPL Documents	PRIOR ART	9
08-04-2006	NPL	NPL Documents	PRIOR ART	9
08-04-2006	NPL	NPL Documents	PRIOR ART	12
08-04-2006	NPL	NPL Documents	PRIOR ART	12
08-04-2006	NPL	NPL Documents	PRIOR ART	10
06-19-2006	IDS	Information Disclosure Statement (IDS)	PROSECUTION	3

Date	Category	Description	Document Type	Count
06-19-2006	NPL	Filed (SB/08)	PRIOR ART	3
06-19-2006	NPL	NPL Documents	PRIOR ART	10
06-19-2006	NPL	NPL Documents	PRIOR ART	12
06-19-2006	NPL	NPL Documents	PRIOR ART	16
06-19-2006	NPL	NPL Documents	PRIOR ART	14
06-19-2006	NPL	NPL Documents	PRIOR ART	6
04-21-2006	CTNF	Non-Final Rejection	PROSECUTION	13
04-21-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
04-12-2006	SRNT	Examiner's search strategy and results	PROSECUTION	4
04-10-2006	SRNT	Examiner's search strategy and results	PROSECUTION	1
01-05-2006	A...	Amendment/Req. Reconsideration-After Non-Final Reject	PROSECUTION	1
01-05-2006	CLM	Claims	PROSECUTION	7
01-05-2006	SPEC	Specification	PROSECUTION	1
01-05-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	8
01-05-2006	XT/	Extension of Time	PROSECUTION	2
01-05-2006	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
09-02-2005	CTNF	Non-Final Rejection	PROSECUTION	11
09-02-2005	1449	List of References cited by applicant and considered by examiner	PRIOR ART	3
09-02-2005	892	List of references cited by examiner	PRIOR ART	2
09-02-2005	NPL	NPL Documents	PRIOR ART	11
09-02-2005	NPL	NPL Documents	PRIOR ART	9
09-02-2005	NPL	NPL Documents	PRIOR ART	5
09-02-2005	NPL	NPL Documents	PRIOR ART	9
09-02-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
08-05-2005	SRNT	Examiner's search strategy and results	PROSECUTION	1
08-03-2005	SRNT	Examiner's search strategy and results	PROSECUTION	3
08-01-2005	SRNT	Examiner's search strategy and results	PROSECUTION	1
11-16-2004	CRFE	CRF entered - partial listing printed by STIC	PROSECUTION	4
11-10-2004	PEFR	Applicant Response to Pre-Exam Formalities Notice	PROSECUTION	4
11-10-2004	OATH	Oath or Declaration filed	PROSECUTION	2
11-10-2004	CRFS	CRF Statement Paper and CRF are the same	PROSECUTION	2
11-10-2004	SEQLIST	Sequence Listing	PROSECUTION	2
11-10-2004	XT/	Extension of Time	PROSECUTION	2
09-13-2004	LET.	Miscellaneous Incoming Letter	PROSECUTION	2
09-13-2004	ARTIFACT	Artifact sheet indicating an item has been filed which cannot be scanned	PROSECUTION	1
09-13-2004	IDS	Information Disclosure Statement (IDS) Filed (SB/08)	PROSECUTION	5
09-13-2004	FOR	Foreign Reference	PRIOR ART	16
09-13-2004	FOR	Foreign Reference	PRIOR ART	156
09-13-2004	FOR	Foreign Reference	PRIOR ART	110
09-13-2004	NPL	NPL Documents	PRIOR ART	10
09-13-2004	NPL	NPL Documents	PRIOR ART	9
09-13-2004	NPL	NPL Documents	PRIOR ART	10

09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	13
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	14
09-13-2004	NPL	NPL Documents	PRIOR ART	9
09-13-2004	NPL	NPL Documents	PRIOR ART	6
09-13-2004	NPL	NPL Documents	PRIOR ART	13
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	8
09-13-2004	NPL	NPL Documents	PRIOR ART	11
09-13-2004	NPL	NPL Documents	PRIOR ART	16
09-13-2004	NPL	NPL Documents	PRIOR ART	13
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	8
09-13-2004	NPL	NPL Documents	PRIOR ART	9
09-13-2004	NPL	NPL Documents	PRIOR ART	23
09-13-2004	NPL	NPL Documents	PRIOR ART	8
09-13-2004	NPL	NPL Documents	PRIOR ART	10
09-13-2004	NPL	NPL Documents	PRIOR ART	6
09-13-2004	NPL	NPL Documents	PRIOR ART	13
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	NPL	NPL Documents	PRIOR ART	9
09-13-2004	NPL	NPL Documents	PRIOR ART	5
09-13-2004	FOR	Foreign Reference	PRIOR ART	48
08-10-2004	PEFN	Pre-Exam Formalities Notice	PROSECUTION	2
11-17-2003	TRNA	Transmittal of New Application	PROSECUTION	2
11-17-2003	SPEC	Specification	PROSECUTION	19
11-17-2003	CLM	Claims	PROSECUTION	2
11-17-2003	ABST	Abstract	PROSECUTION	1
11-17-2003	DRW	Drawings-only black and white line drawings	PROSECUTION	1
11-17-2003	OATH	Oath or Declaration filed	PROSECUTION	2
11-17-2003	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1
11-17-2003	WFEE	Fee Worksheet (PTO-875)	PROSECUTION	1

---

**Close Window**



## EXHIBIT C

2008 SEP 10 PM 4:46 PATENT  
ATTORNEY DOCKET NO. 06132/075002IEUC  
CCertificate of Mailing: Date of Deposit: September 5, 2008

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Katherine Johnson

Printed name of person mailing correspondence

Katherine Johnson

Signature of person mailing correspondence

RECEIVED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 15 2008

Applicant: Arroyo et al.

Confirmation No.: 5599

OFFICE OF PETITIONS

Serial No.: 10/715,868

Art Unit: 1648

Filed: November 17, 2003

Examiner: Mary Mosher

Customer No.: 21559

Title: West Nile Virus Vaccine

09/11/2008 DALLEN 00000002 10715868

01 FC:1461

740.00 DP

02 FC:2801

405.00 DP

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. § 1.181, Applicants hereby petition to have the Notice of Abandonment that was mailed in connection with the above-captioned case on August 22, 2008 withdrawn. A copy of the Notice is enclosed. According to the Notice, the application was abandoned for Applicants' failure to timely pay the required issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance (April 24, 2008). However, as explained below, a submission was timely filed on July 22, 2008.

The undersigned, Applicants' attorney of record, first became aware of the abandonment on August 22, 2008, upon receipt of the Notice of Abandonment and submits that this petition to withdraw the Notice is being promptly submitted as required by 37 C.F.R. § 1.181(f).

The following documents are submitted as proof that a reply was timely filed on July 22, 2008. The submitted copies of these documents are true copies of those prior submitted or otherwise connected with this matter:

1. A copy of the Reply to Notice of Allowance, including an executed certificate of mailing dated July 22, 2008.
2. A copy of accompanying papers submitted with the Reply to Notice of Allowance, including a Statement of Large Entity Status and Issue Fee Transmittal, each of which are dated July 22, 2008.
3. A copy of a check dated July 22 and postcard dated July 22, 2008 that were included with the Reply to Notice of Allowance. (Note: the number of pages of the Statement of Large Entity Status was corrected after the copy of the postcard was made, but prior to submission.)
4. A copy of the postcard that was stamped as having been received by the PTO Mailroom on July 24, 2008.
5. A copy of our firm's mailing log for July 22, 2008, which indicates that the package was checked by docketing staff, handed to mailroom staff for delivery to the Post Office, and delivered to the Post Office on July 22, 2008. (The log has been redacted to remove reference to other items being filed on that day.)

Applicants submit that the Reply was timely filed and request that the Notice of Abandonment be withdrawn.

Applicants further request that the Reply to Notice of Allowance and issue fee payment be processed, so that the application may proceed to issuance.

Enclosed is a new check for \$740 to cover the fees believed to be due, in view of Applicants' prior submission of an issue fee payment and related fees on January 17, 2007. The total fee required now is \$1770, which includes an issue fee payment for a large entity as required by 37 C.F.R. § 1.18(a) of \$1440, a publication fee of \$300, and a patent copy fee required by 37 C.F.R. § 1.19(a)(1)(i) of \$30.00 for ten patent copies. With the January 17, 2007 submission, Applicants paid \$1030. The difference between \$1770 and \$1030 is \$740, the amount now paid.

Applicants note that a pre-grant publication issued in this case on November 29, 2007. As discussed in their submission dated February 19, 2008, Applicants did not request this pre-grant publication and question whether this publication may have taken place due to the prior payment of a publication fee, with the prior submitted issue fee. If this is the case, then Applicants respectfully submit that they should not be required to pay the publication fee again. However, reference is made to the deposit account of Applicants' representative, if this has been misunderstood.

Applicants also submit herewith a check for \$405 to supplement the payment for the Request for Continued Examination filed on March 26, 2008. The fee paid previously was \$405 and Applicants' representative has since learned that large entity fees should have been paid at that time, as stated in the enclosed Statement of Large Entity Status. The error was made without deceptive intent and the current payment ensures that all fees due in this case have been paid at the correct level.

Although no additional fees are believed to be due, if there are any additional charges required (e.g., for withdrawal of abandonment and proceeding with issuance) or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: September 5, 2008

Susan M. Michaud  
Susan M. Michaud, Ph.D.  
Reg. No. 42,885

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045



PATENT  
ATTORNEY DOCKET NO. 06132/075002

Certificate of Mailing: Date of Deposit: September 5, 2008

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Katherine Johnson  
Printed name of person mailing correspondence

Katherine Johnson  
Signature of person mailing correspondence

RECEIVED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 15 2008

Applicant:	Arroyo et al.	Confirmation No.:	5599
Serial No.:	10/715,868	Art Unit:	1648
Filed:	November 17, 2003	Examiner:	Mary Mosher
Customer No.:	21559		
Title:	West Nile Virus Vaccine		

OFFICE OF PETITIONS

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

ATTORNEY DECLARATION

I, Susan M. Michaud, declare as follows:

I am a partner in the law firm of Clark & Elbing LLP and an attorney of record in the above-captioned case.

I first became aware of the abandonment of the above-captioned application on August 22, 2008, upon receipt of a Notice of Abandonment. I submit that the accompanying Petition to Withdraw the Notification is being promptly submitted as required by 37 C.F.R. § 1.181(f).

On July 22, 2008, I reviewed and signed correspondence entitled Reply to Notice of Allowance, Statement of Large Entity Status, and Issue Fee Transmittal, which each included a

certificate of mailing printed directly on the correspondence, indicating that the correspondence, accompanying postcard, and check were being deposited with the United States Postal Service on July 22, 2008. The documents were prepared by my assistant, who made photocopies for the file (the number of pages of the Statement of Large Entity Status was corrected on the postcard after the copy of the postcard was made). The originals were checked by our docketing staff and sealed in an envelope preprinted with the address of the Commissioner for Patents, which was handed to our staff member who delivers such materials to the United States Post Office, in accordance with our standard office procedures. A copy of the mailing log establishing that the correspondence was mailed for this application is attached (see the item labeled with client/matter number 06132/075002; the log has been redacted to remove reference to other items filed that day).

Knowing the procedures for outgoing mail and the experience of our staff with them, I had reasonable basis to expect that the correspondence would be deposited with the United States Postal Service on the date indicated. Having received the stamped postcard back from the Patent Office indicates that the material was properly and timely submitted.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: September 5, 2008

Susan M. Michaud  
Susan M. Michaud, Ph.D.  
Reg. No. 42,885

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045



## UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED

AUG 22 2008

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS & ELBING  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,868	11/17/2003	Juan Arroyo	06132/075002	5599
EXAMINER				
MOSHER, MARY				
ART UNIT		PAPER NUMBER		
1848				
NOTIFICATION DATE		DELIVERY MODE		
08/22/2008		ELECTRONIC		

7590  
CLARK & ELBING LLP  
101 FEDERAL STREET  
BOSTON, MA 02110

08/22/2008

ACTION DUE Withdraw/ReviveDUE DATE 10-22-08 / 8-22-09INITIALS LKB TM

## Notice of Abandonment

This application is abandoned in view of:

1. ☐ The applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission date \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of:
    - (1) a timely filed amendment which places the application in condition for allowance;
    - (2) a timely filed Notice of Appeal (with appeal fee);
    - (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box e below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission date \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_.  
The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawing have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or request to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch  
Office of Data Management



PATENT  
ATTORNEY DOCKET NO. 06132/075002

Certificate of Mailing: Date of Deposit: July 22, 2008

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Katherine Johnson

Printed name of person mailing correspondence

Katherine Johnson

Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Arroyo et al.

Confirmation No.: 5599

Serial No.: 10/715,868

Art Unit: 1648

Filed: November 17, 2003

Examiner: Mary Mosher

Customer No.: 21559

Title: West Nile Virus Vaccine

RECEIVED

SEP 15 2008

OFFICE OF PETITIONS

Mail Stop Issue Fee  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REPLY TO NOTICE OF ALLOWANCE

In reply to the Notice of Allowance that was mailed in connection with the above-captioned application on April 24, 2008 and having confirmation number 5599, Applicants submit the following.

Enclosed are a completed fee transmittal form PTOL-85 and a check covering \$740 to cover the fees now due, in view of Applicants' prior submission of an issue fee payment and related fees on January 17, 2007. The total fee required now is \$1770, which includes an issue fee payment for a large entity as required by 37 C.F.R. § 1.18(a) of \$1440, a publication fee of \$300, and a patent copy fee required by 37 C.F.R. § 1.19(a)(1)(i) of \$30.00 for ten patent copies.



With the January 17, 2007 submission, Applicants paid \$1030. The difference between \$1770 and \$1030 is \$740, the amount now paid. Applicants note that a pre-grant publication issued in this case on November 29, 2007. As discussed in their submission dated February 19, 2008, Applicants did not request this pre-grant publication and question whether this publication may have taken place due to the prior payment of a publication fee, with the prior submitted issue fee. If this is the case, then Applicants respectfully submit that they should not be required to pay the publication fee again. However, reference is made to the deposit account of Applicants' representative, if this has been misunderstood.

If there are any other charges required for proceeding with issuance of a patent in this case or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: July 22, 2008

Susan M. Michaud  
Susan M. Michaud, Ph.D.  
Reg. No. 42,885

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045



PATENT  
ATTORNEY DOCKET NO. 06132/075002

Certificate of Mailing: Date of Deposit: July 22, 2008

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Katherine Johnson

Printed name of person mailing correspondence

Katherine Johnson

Signature of person mailing correspondence

RECEIVED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 15 2008

Applicant: Arroyo et al.  
Serial No.: 10/715,868  
Filed: November 17, 2003  
Customer No.: 21559  
Title: West Nile Virus Vaccine

Confirmation No.: 5599  
Art Unit: 1648  
Examiner: Mary Mosher

OFFICE OF PETITIONS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT OF LARGE ENTITY STATUS

Applicants request that Patent Office records indicate that small entity status is not applicable for future fee payments in the above-captioned case. Applicants enclose a check covering \$405 to supplement payment of the Request for Continued Examination fee paid on March 26, 2008. The fee paid previously was \$405 and Applicants' representative has since learned that large entity fees should have been paid at that time. This error was made without deceptive intent and the current payment ensures that all fees due in this case have been paid at the correct level.

Although no additional fees are believed to be due, if there are any additional charges or credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: July 22, 2008

Susan M. Michaud  
Susan M. Michaud, Ph.D.  
Reg. No. 42,885

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045

CLARK & ELBING LLP  
101 FEDERAL STREET  
BOSTON, MA 02110

EXPLANATION	AMOUNT

25-801440  
7922

PAY  
AMOUNT  
OF

DATE

7/22

DIRECTOR OF PATENTS & TRADEMARKS

061321075002

7922

\$ 1145.00

CHECK  
AMOUNT

DOLLARS

CHECK  
NUMBER

7922

CHECK  
AMOUNT

1145.00

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

7922

\*\*\*PROSECUTION\*\*\*

Attorney Docket Number: 06132/075002

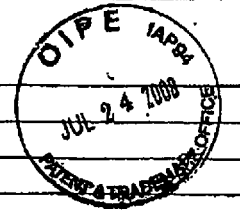
The U.S. PTO date stamp sets forth the date of receipt of:

Applicant/Patentee: Arroyo et al.

Serial/Patent Number: 10/715,868

Filed/Issued: November 17, 2003

Title: West Nile Virus Vaccine



<input checked="" type="checkbox"/> Transmittal Letter	Pages: 2	<input type="checkbox"/> Declaration & POA	Pages: _____
<input type="checkbox"/> Notice to File Missing Parts	Pages: _____	<input type="checkbox"/> Assignment & Cover Sheet	Pages: _____
<input type="checkbox"/> Reply to Missing Parts	Pages: _____	<input type="checkbox"/> Change of Address	Pages: _____
<input type="checkbox"/> Reply to Office Action	Pages: _____	<input type="checkbox"/> Preliminary Amendment	Pages: _____
<input type="checkbox"/> Petition for Extension	Pages: _____	<input type="checkbox"/> IDS	Pages: _____
<input type="checkbox"/> Notice of Appeal	Pages: _____	<input type="checkbox"/> Form PTO-1449	Pages: _____
<input type="checkbox"/> Appeal Brief	Pages: _____	<input type="checkbox"/> Cited References	Number: _____
<input type="checkbox"/> Drawings Formal/Informal	Pages: _____	<input type="checkbox"/> Sequence Listing	Pages: _____
<input type="checkbox"/> M-Fee Payment	Pages: _____	<input type="checkbox"/> Sequence Statement	Pages: _____
<input checked="" type="checkbox"/> Issue Fee Transmittal Form	Pages: 1	<input type="checkbox"/> Sequence Diskette	Number: _____
<input checked="" type="checkbox"/> Check	\$: 1145	<input type="checkbox"/> Application Data Sheet	Pages: _____
<input checked="" type="checkbox"/> Other Statement of Large Entity Status			Pages: 2
<input type="checkbox"/> Other			Pages: _____
<input type="checkbox"/> Other			Pages: _____

Atty/Secy: SMM/kni

Matter Name: \_\_\_\_\_

Date: 07/22/2008

RECEIVED

SEP 15 2008

OFFICE OF PETITIONS

Packages To Go List for July 22nd, 2008

1st Class ☐ Express ☐

Scanned           

E-File ☐ Other ☐

Signing Express Mail Today David Scott

Omega           

Client/Matter No.	Description (include all parts of filings)	Legal Staff	Standard Fee Code	Final (Yes/No)	Express, 1st Class, Fax, DHL, E-file	Checker	Status	OS Mail Receipt	Delivery Confirmation
061321 075002	Issue Fee Payment; Statement of large entity	SHM/ KNJ	US9	no	1st E-file	mm	OK	DS	DS

Best Available Copy

CPI Finals Report Reviewed: WJW (checker initials)



RECEIVED

SEP 15 2008

## PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or **Fax** (571)-273-2885

OFFICE OF PETITIONS

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

21559 7590 04/24/2008

CLARK & ELBING LLP  
101 FEDERAL STREET  
BOSTON, MA 02110

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Katherine Johnson (Depositor's name)  
Katherine Johnson (Signature)  
July 22, 2008 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,868	11/17/2003	Juan Arroyo	06132/075002	5599

TITLE OF INVENTION: WEST NILE VIRUS VACCINE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$1200 N40	\$390 0	\$700	\$1020 740	07/24/2008
EXAMINER	ART UNIT	CLASS-SUBCLASS				
MOSHER, MARY	1648	424-199100				

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.  
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,  
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 Clark & Elbing LLP  
2 \_\_\_\_\_  
3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.111. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

Acambis Inc.

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Cambridge, MA

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☒ Issue Fee  
☒ Publication Fee (No small entity discount permitted)  
☒ Advance Order - # of Copies 10

4b. Payment of Fee(s): (Please first reuppay any previously paid issue fee shown above)

- ☒ A check is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☒ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number 03-2095 (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.☒ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature Susan M. MichaudDate July 22, 2008Typed or printed name Susan M. Michaud, Ph.D.Registration No. 42,885

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to receive)

EXHIBIT D



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

CLARK & ELBING LLP  
101 FEDERAL STREET  
BOSTON MA 02110

In re Application of	:	
<u>ARROYO, JUAN</u>	:	
Application No.: 10/715868	:	DECISION ON
Filing or 371(c) Date: 11/17/2003	:	PETITION
Attorney Docket Number: 06132/075002	:	

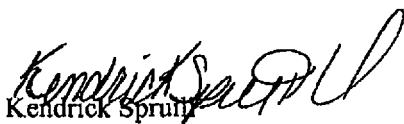
This is a decision in response to the "Petition to Withdraw Holding of Abandonment," filed September 08, 2008.

This is GRANTED.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance, mailed April 24, 2008.

In view of the foregoing, the holding of abandonment for failure to timely pay the issue fee is hereby withdrawn and the application restored to pending status.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 308-9250 ext. 164.

For   
Kendrick Sprunt  
Application Assistance Unit  
Office of Data Management